

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLAE SIDE

Writ Petition No. 3979 of 2007
with
Writ Petition No.3980 of 2007

Shri Chandrakant Atmaram Madwal
@ Arolkar and others ..Petitioners

vs.

Shri Balkrishna Govind Yesaji
and others ..Respondents

CORAM: S.C.DHARMADHIKARI J.
4th July, 2007

P.C.

1. Reg.Civil Suit No.13 of 2005 has been filed by respondent nos. 1 to 4. One of the reliefs in the said suit which is instituted against the present petitioners is that the original plaintiff so also respondent no.5 by themselves or through their agents and servants shall not in any manner be permitted to disturb the peaceful possession of the plaintiffs in respect of the suit property.

2. It is undisputed before me that in this suit, the original plaintiffs applied for temporary injunction in the aforesaid terms. That application was opposed by the present petitioners.

3. The present petitioners also filed an application purporting to be one under sec.9A of the Code of Civil Procedure as applicable to the State of Maharashtra for determining the issue of jurisdiction as a preliminary issue. At the same time, the present petitioner/original defendants filed application Exh.58 under Order 39 Rule 1 of the Code of Civil Procedure praying for an injunction against the original plaintiffs and defendant no.6 to the suit preventing them from in any manner cutting the trees on the suit property.

4. The Trial Court dismissed the application Ex.58 so also passed no orders on the application for framing the issue of jurisdiction as a preliminary issue but allowed the application of the plaintiffs. Thus, it allowed the application of the plaintiff (Exh.5 for injunction) during the pendency of the suit to protect their possession.

5. The order of the Trial Court granting injunction dated 17th October, 2005 was impugned by filing Misc.Civil Appeal which has also been rejected.

6. It is not necessary to reproduce the factual position in as much as there is concurrent finding at the prima facie stage that the plaintiffs are in possession of the suit property. As long as they are in possession, the Courts below have observed that such possession has to be

protected, in as much as the petitioners cannot be permitted to dispossess the plaintiffs save and except by due process of law. To my mind, such prima facie observations based upon the material produced do not require any interference in this Court's jurisdiction under Article 227 of the Constitution of India, more so, when they are not demonstrated to be perverse or vitiated by any error apparent.

7. As far as rejection of the petitioners' application is concerned, the Courts below have observed that no material could be produced by the petitioners with regard to the claim of possession. If the petitioners were put in actual possession of the property only then they are entitled to injunction to protect the cutting of trees thereon. Once it is prima facie observed that the plaintiffs are in possession then the relief claimed vide Exh.58 has rightly been rejected. There is no perversity demonstrated nor there is any error apparent in the findings in that behalf rendered by the Courts below. The petition is summarily dismissed.

8. The application Exh.25, according to the parties before the Courts below, has also been rejected. That is how the appeal was preferred challenging that order. However, the learned Advocate appearing for the petitioners submits that the application has not been

rejected. In any event it is doubtful as to whether any appeal could have been filed against the alleged rejection of Exh.25. Be that as it may, the impugned orders do not prevent the petitioners from applying to the Trial Court for framing the issue of jurisdiction and trying the same along with other issues. It would be open also for the parties to request the Trial Court despite the impugned orders and the observations therein that the said issue goes to the root of the matter and, therefore, be taken up and decide as a preliminary issue. Leaving all contentions of both sides open in that behalf the writ petitionis summarily dismissed.

(S.C.DHARMADHIKARI J.)